IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15530 of 2003

Date of decision: 4-12-2003

UNION OF INDIA & ANR.

Versus

JAYABEN D VORA

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice J.N.Bhatt, Judge

Whether approved for reporting?

For

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

#. Through this Special Civil Application, the judgment of the Central Administrative Tribunal, Ahmedabad Bench (CAT), dated September 28, 2001, in O.A. No.864 of 1999,

has been challenged.

#. The respondent is the wife of Shri D.D.Vora, who was a Packer with the petitioners. He is missing since

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Whether reporters of Local Papers may be allowed to see the Judgment?

15.11.1975. The respondent alleges that he has not been heard of by her or the relatives since 1975. All efforts to trace him failed. Missing reported to the police, which has not been able to trace him. With this background, she submits that her husband should be presumed to have been dead. The petitioners should not have rejected her claim for family pension and appointment of her son on compassionate ground.

#. The petitioners admit that the deceased was working with them against Class-IV category on temporary basis at Geeta Mandir Road Post Office, from 22.8.1972. He stopped coming on duty from 8.7.1975. Since he failed to resume duty after 8.7.1975, he absconded without intimation, as such, he is deemed to have resigned as per remark on Pay Bill Voucher No.8/ May IP TSO (East) Sub Dn. Memo No.PF/DD Vora/75-76 dated 12.5.1976. The petitioners also admit that the respondent lodged the First Information Report but after a long time whereafter the application was preferred to the Department for family pension and retiral dues. The information with respect to his service was gathered and submitted to the Deputy Director, Accounts (Postal), Behrampura, Ahmedabad-22. However, case has been rejected on the ground that since the Department has taken him to have resigned from service, his service stood forfeited and was not entitled to any benefits.

#. With regard to prayer for compassionate appointment, the petitioners state that the application for compassionate appointment had not been filed, even otherwise, there is no scheme for appointing a person on compassionate ground where an employee is deemed to have resigned from service.

#. Both the above questions have been examined by CAT. It is held that there is no dispute with regard to the deceased being in service of the petitioners from 22.8.1972 to 8.10.1975. There is also no dispute that he was missing from 8.10.1975, and he did not report for duty. Looking to the claim of respondent that deceased was not heard of by her or relatives despite search and lodging of complaint for past about 17 years, in the absence of the petitioners coming up with proof that he

is alive, it is presumed that the respondent's husband is dead. This presumption, CAT holds, can be drawn under Section 108 of the Indian Evidence Act, 1872. The CAT also rejected the case of the petitioners that since he was temporary, did not report for duty, he is deemed to have resigned from the job since a dead person could not have resumed the duty, therefore, the conclusion drawn by the petitioners is found to be without application of mind. Rule 14(C) of the Revised Leave Rules, 1933, could not be applied in a case of this nature, but only in a case where employee is alive but does not reported for duty. The fact remains that the deceased has not been heard for past more than 17 years by the respondent or her relations, as such, it can be inferred that he is dead. This presumption can be drawn under Section 108 of the Indian Evidence Act, 1872, in the facts and circumstances of the case. With regard to claim for compassionate appointment, CAT holds that from the record, it could not be gathered that the respondent preferred application seeking compassionate appointment to her son. Even otherwise, prayer for compassionate appointment could not be considered at such a belated stage, almost 17 years in this case.

#. Finally, the CAT directed the petitioners to allow family pension claim of the respondent, make her payment of family pension as per Rules and Regulations in existence, giving opportunity to the petitioners to ask respondent to furnish indemnity bond by way of security of family pension amount and undertake that in the event of appearance of the deceased, she would refund the amount of family pension and in case it is not done, it would be open to the petitioners to recover the money by way of arrears of land revenue, and to complete the exercise within three months from the receipt of order.

#. Through this petition, this judgment of the CAT has been assailed. Ms.Paurami Sheth, learned counsel, heard for the appellant. Record perused, particularly, the conclusions of the CAT drawn on the basis of material placed before it. In our opinion, the impugned judgment is based on correct appraisal of facts of the case, therefore, we find no justification to set aside the same. It is undeniable that the deceased was a Packer with the petitioners. The respondent alleges that he is her husband. He is missing from 15.11.1975, not heard by her or relatives. Efforts to trace him failed. Police also failed to trace him after report was lodged with it, of course, after a long time. With this background, presumption that the deceased is dead can legitimately be drawn under Section 108 of the Indian Evidence Act, 1872.

Therefore, the contention of the petitioners that the respondent's husband is absconding and did not report for duty therefore, he is presumed to have resigned, is liable to be rejected since such a person is not expected to report for duty. The petitioners proceeded to work out the dues payable to the respondent and the Deputy Director, Accounts (Postal), should not have rejected the same. The contentions raised by Ms.Paurami Sheth, learned counsel appearing for the petitioners, are rejected.

#. Ms.Paurami Sheth, learned counsel appearing for the petitioners, submits that the petitioners have worked out the claim as per the Rules and Regulations taking that the deceased remained in service from 22.8.1972 to 15.11.1975. The amount of Rs.1,35,250/= is payable to the respondent upto 31.10.2003 by way of family pension. From 1.11.2003, family pension at the rate of Rs.1,275/= per month is payable to the respondent. Ms.Paurami Sheth, learned counsel, further submits that the petitioners would call the respondent to take the above amount, of course, after taking indemnity bond and verification as to identity. Let this be done in two months' time. No other point has been raised.

##. In view of above discussion and observations, the petition is rejected in-limine.

(BHAWANI SINGH)
CHIEF JUSTICE

(J.N.BHATT)
JUDGE

(sunil)